

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed June 22, 2004. At the time of the Office Action, Claims 1-66 were pending. In order to advance prosecution of this case, Applicants add new Claims 67 and 68. Claims 1-68 are currently pending in the Application. Applicants respectfully request reconsideration and favorable action in this case.

Section 102 Rejections

The Office Action rejects Claims 1, 14-15, 24, 35, 44, 51 and 58 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,301,258 issued to Katseff et al ("*Katseff*"). Applicants respectfully traverse these rejections for the reasons stated below.

Claim 1 is directed to an endpoint device for controlling the delivery of streaming media including a communication network interface operable to receive streaming media from a network device at a first delivery rate, and a memory coupled to the communication network interface operable to store media received through the communication network interface. The endpoint also includes a media rate controller coupled to the memory and the communication network interface operable to determine an adjustment to the first delivery rate and generate a command for the network device to change the first delivery rate in accordance with the adjustment.

The Office Action does not specifically delineate which component of *Katseff* allegedly discloses the "endpoint device," "network interface," and "network device" referred to in Claim 1. For purposes of this Response, Applicants will assume that the Examiner is contending that: (i) the "PC-based packet phone" of Figure 1 of *Katseff* is the "endpoint device"; (ii) the "network layer 130" of Figure 1 of *Katseff* is the "network interface"; and (iii) the "modem 140" of Figure 1 of *Katseff* is the "network device."¹

Accordindgly, *Katseff* does not disclose a media rate controller operable to determine an adjustment to a first delivery rate and generate a command for a network device to change the first delivery rate in accordance with the adjustment, where the first delivery rate is a rate of streaming media received through a communication network interface from a network device and stored by a memory. Instead, the PC-based phone of Katseff merely adjusts, changes and commands the first delivery rate of itself (not of a network device). For at least these reasons, Applicants respectfully contend that Claim 1 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 1 be withdrawn.

Claim 14 is directed to an endpoint device for controlling the delivery of streaming media including a network interface card operable to receive audio media at different delivery rates and coupled to a random access memory containing a buffer operable

¹ Applicants do not concede that this is a proper characterization of the *Katseff* reference. However, the rejections of the Office Action suggest that the Examiner is interpreting *Katseff* in this manner.

to store audio media received through the network interface card. The endpoint device also includes a digital signal processor operable to process the media in the buffer based on the rate at which output is being generated based on the media, and a media rate controller operable to monitor the status of the audio media in the buffer, to determine an adjustment to the current rate at which the audio media is being delivered based on the status of the audio media in the buffer, and to generate a command indicative of the adjustment to the current delivery rate. The endpoint further includes a coder/decoder operable to convert the processed audio media into analog signals representative of audible sounds, and a speaker operable to receive the analog signals and generate audible sounds based on them.

As discussed above with regard to Claim 1, the Office Action does not specifically delineate which component of *Katseff* allegedly discloses the “endpoint device,” “network interface card,” “media rate controller,” and “network device” referred to in Claim 1. For purposes of this Response, Applicants will assume that the Examiner is contending that: (i) the “PC-based packet phone” of Figure 1 of *Katseff* is the “endpoint device”; (ii) the “network layer 130” of Figure 1 of *Katseff* is the “network interface card”; (iii) the “buffer manager 150” of Figure 1 of *Katseff* is the “media rate controller”; and (iv) the “modem 140” of Figure 1 of *Katseff* is the “network device.”²

Accordingly, *Katseff* does not disclose a network interface card operable to receive audio media at different delivery rates, a buffer operable to store audio media received through the network interface card, or a media rate controller operable to monitor the status of the audio media in the buffer, to determine an adjustment to the current rate at which the audio media is being delivered based on the status of the audio media in the buffer, and to generate a command indicative of the adjustment to the current delivery rate. Rather, the PC-based phone of *Katseff* changes the output rate from the buffer (not the delivery rate). For at least these reasons, Applicants respectfully contend that Claim 14 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 14 be withdrawn.

Claim 15 is directed to a method for controlling the delivery of streaming media at an endpoint device including receiving streaming media at an endpoint device at a first delivery rate, storing the received media, determining whether to adjust the first delivery

² Applicants do not concede that this is a proper characterization of the *Katseff* reference. However, the rejections of the Office Action suggest that the Examiner is interpreting *Katseff* in this manner.

rate, determining an adjustment to the first delivery rate if an adjustment is desired, and generating a command for a network device to change the first delivery rate in accordance with the adjustment.

Regarding Claim 15, *Katseff* discloses a buffer manager 150 operable to control a telephony application 127 and telephony input buffer 129, such that data is played out of telephony input buffer before the buffer fills up. Buffer manager 150 clocks the audio data out at a rate less than the normal rate (i.e. at less than the real-time rate) which allows telephony input buffer 129 to fill. *See Katseff*, column 4, lines 49-51. *Katseff* does not disclose receiving streaming media at an endpoint device at a first delivery rate, storing the received media, determining whether to adjust the first delivery rate, determining an adjustment to the first delivery rate if an adjustment is desired, and generating a command for a network device to change the first delivery rate in accordance with the adjustment.

Moreover, the Office Action seems to suggest that the combination of buffer manager 150 and telephone application 127 serves as the endpoint device. *See* Office Action, page 2, ¶ 3, last sentence. This characterization would seem to designate the input buffer 129 as the network device. While Applicants do not agree with this characterization of the reference, Applicants contend that this characterization of *Katseff* does not obviate the invention. Assuming for this argument only that this characterization was correct, *Katseff* discloses that telephony program 125 delays playing the data out to speaker 170 from buffer 129, through telephony application 127, until telephony input buffer 129 is full or has reached a given threshold. *See Katseff*, column 4, lines 38-41. In this characterization, it is the telephony program 125 and not the input buffer 129 which should be receiving the command to change the delivery rate, but as the designated network device, the command is generated for input buffer 129, which *Katseff* does not disclose as controlling the delivery rate.

Furthermore, the Office Action does not specifically state component for component what relates to what. If the Examiner continues to rely on *Katseff* as a reference, Applicants respectfully request the Examiner to specify which components are equivalent to the claimed components and which components perform each claimed function. For at least these reasons, Applicants respectfully contend that Claim 15 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 15 be withdrawn.

Claim 24 is directed to a set of logic encoded in media for controlling the delivery of streaming media, the logic operable to detect the reception of streaming media at a first delivery rate, instruct a memory to store the received media, determine whether to adjust the first delivery rate, determine an adjustment to the first delivery rate if an adjustment is desired, and generate a command for a network device to change the first delivery rate in accordance with the adjustment.

As discussed above with regard to Claim 15, *Katseff* does not disclose detecting the reception of streaming media at a first delivery rate, instructing a memory to store the received media, determining whether to adjust the first delivery rate, determining an adjustment to the first delivery rate if an adjustment is desired, and generating a command for a network device to change the first delivery rate in accordance with the adjustment. For at least these reasons, Applicants respectfully contend that Claim 24 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 24 be withdrawn.

Claim 35 is directed to an endpoint device for controlling the delivery of streaming media including means for receiving streaming media at an endpoint device at a first delivery rate and means for storing the received media. The endpoint also includes means for determining whether to adjust the first delivery rate and an adjustment to the first delivery rate if an adjustment is desired, and means for generating a command for a network device to change the first delivery rate in accordance with the adjustment.

As discussed above with regard to Claim 15, *Katseff* does not disclose means for detecting the reception of streaming media at a first delivery rate, or means for instructing a memory to store the received media. *Katseff* also does not disclose means for determining whether to adjust the first delivery rate, determining an adjustment to the first delivery rate if an adjustment is desired, and means for generating a command for a network device to change the first delivery rate in accordance with the adjustment. For at least these reasons, Applicants respectfully contend that Claim 35 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 35 be withdrawn.

Claim 44 is directed to a system for delivering streaming media including a communication network interface operable to send streaming media to a communication network and a memory coupled to the communication network interface, the memory

including at least one file containing media. The system also includes a delivery controller coupled to the memory and the communication network interface, the delivery controller operable to detect a command to send the media from the file through the communication network interface to an endpoint device, retrieve the media from the file and format it into packets, and stream the packets through the communication network interface at a determined rate.

As regards Claim 44, *Katseff* discloses a method for reducing latency in packet telephony caused by anti-jitter buffering. *See Katseff*, column 2, lines 66-67. *Katseff* does not disclose memory including at least one file containing media. *Katseff* also does not disclose a delivery controller operable to detect a command to send the media from the file through the communication network interface to an endpoint device, retrieve the media from the file and format it into packets, and stream the packets through the communication network interface at a determined rate. For at least these reasons, Applicants respectfully contend that Claim 44 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 44 be withdrawn.

Claim 51 is directed to a method for delivering streaming media including storing at least one file containing media, detecting a command to send the media in the file to an endpoint device, retrieving the media from the file and formatting it into packets, and streaming the packets to the endpoint device at a determined rate.

Regarding claim 51, and for the same reasons as discussed above regarding claim 44, *Katseff* does not disclose storing at least one file containing media. *Katseff* also does not disclose detecting a command to send the media in the file to an endpoint device, retrieving the media from the file and formatting it into packets, and streaming the packets to the endpoint device at a determined rate. For at least these reasons, Applicants respectfully contend that Claim 51 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 51 be withdrawn.

Claim 58 is directed to a system for delivering electronic media which includes a communication network, and a media output device operable to receive media from the communication network at a first delivery rate and generate output based on the media and to determine an adjustment to the first delivery rate and generate a command to deliver media in accordance with the adjustment. The system also includes a media delivery

system operable to stream media destined for the media output device to the communication network at the first delivery rate, and to detect the command to adjust the first delivery rate and stream subsequent media destined for the media output device to the communication network at the adjusted delivery rate.

Regarding claim 58, and for the same reasons as discussed above regarding claim 44, *Katseff* does not disclose a media output device operable to receive media from the communication network at a first delivery rate and generate output based on the media and to determine an adjustment to the first delivery rate and generate a command to deliver media in accordance with the adjustment. *Katseff* also does not disclose a media delivery system operable to stream media destined for the media output device to the communication network at the first delivery rate, and to detect the command to adjust the first delivery rate and stream subsequent media destined for the media output device to the communication network at the adjusted delivery rate. For at least these reasons, Applicants respectfully contend that Claim 58 is not disclosed by the portions of *Katseff* cited in the Office Action and request that the rejection of Claim 58 be withdrawn.

Section 103 Rejections

The Office Action rejects Claims 2-13, 16-23, 25-34, 36-43, 45-50, 52-57 and 59-66 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,301,258 issued to Katseff et al ("*Katseff*") in view of U.S. Patent No. 6,185,221 issued to Aybay ("*Aybay*"). Applicants respectfully traverse these rejections for the reasons stated below.

Claims 2-13 depend from independent Claim 1, Claims 16-23 depend from independent Claim 15, Claims 25-34 depend from independent Claim 24, Claims 36-43 depend from independent Claim 35, Claims 45-50 depend from independent Claim 44, Claims 52-57 depend from independent Claim 51, and Claims 59-66 depend from independent Claim 58. As discussed above with regard to these independent claims, the cited portions of *Katseff* do not disclose, teach, or suggest each of the limitations of the independent Claims. Moreover, none of the cited portions of the *Aybay* reference disclose, teach, or suggest the limitations absent from *Katseff*. For at least these reasons, Applicants respectfully submit that Claims 2-13, 16-23, 25-34, 36-43, 45-50, 52-57 and 59-66 are patentable over the references cited in the Office Action, and request that the rejection of these Claims be withdrawn.

Regarding Claims 10-11, 23, 33, and 43, the Examiner takes Official Notice and contends: "It would have been obvious to one of ordinary skill in the art at the time of the application's invention to enable a user to specify the delivery rates to obtain the advantages of communicating as specifically desired by the client." *See* Office Action, page 5, ¶ 14. To the extent that this rejection is maintained by the Examiner and based on "Official Notice," "well-known art," common knowledge, or other information within the Examiner's personal knowledge, Applicants respectfully request that the Examiner cite a reference in support of his position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. § 1.107.

New Claims

Applicants have amended the Application to add new Claims 67 and 68. Applicants respectfully contend that Claims 67 and 68 of the present Application are fully supported by the specification of the present Application as originally filed. Applicants also respectfully submit that new Claims 67 and 68 are patentably distinct from the references cited by the Office Action.

Specifically, Claim 67 depends from Claim 1 and additionally includes the network device being located at a physically remote location from the communication network interface, and the communication network interface being operable to receive the streaming media over a communication network. Claim 67 is patentably distinguishable from *Katseff* for the reasons discussed above with respect to Claim 1, and also because *Katseff* does not disclose a remote network device or generating a command for the remote network device to change the first delivery rate. The cited portions of *Aybay* also do not contain each of these limitations. Therefore, Applicants respectfully submit that Claim 67 is patentably distinct from the references cited in the Office Action.

Claim 68 depends from Claim 15 and additionally includes transmitting the command to the network device to change the first delivery rate in accordance with the adjustment. Claim 68 is patentably distinguishable from *Katseff* for the reasons discussed above with respect to Claim 15, and also because *Katseff* does not disclose transmitting a command to a network device to change a delivery rate. The cited portions of *Aybay* also do not contain each of these limitations. Therefore, Applicants respectfully submit that Claim 68 is patentably distinct from the references cited in the Office Action.

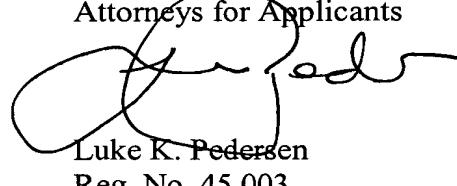
Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

A transmittal calculating the additional fee due for the new claims is enclosed herewith, along with a check in the amount of \$36.00 to satisfy the fee for the new claims. Applicants believe no other fees are due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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